UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,569	08/28/2003	Janell M. Gottesman	P0011629.00	8218

27581   7590   09/03/2008

MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MINNEAPOLIS, MN 55432-9924

EXAMINER
RAPILLO, KRISTINE K

ART UNIT	PAPER NUMBER
3626	

MAIL DATE	DELIVERY MODE
09/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *5/12/2008*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All   b)☐ Some * c)☐ None of:

　　　　1.☐ Certified copies of the priority documents have been received.

　　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claims 1 – 20 are pending.

Notice to Applicant

1.   This communication is in response to the request for continued examination (RCE) filed May 12,

2008. The following has occurred: Claims 1, 5, 6, and 15 are amended. Claims 1 – 20 are presented for

examination.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as
> set forth in section 102 of this title, if the differences between the subject matter sought to be
> patented and the prior art are such that the subject matter as a whole would have been obvious
> at the time the invention was made to a person having ordinary skill in the art to which said
> subject matter pertains. Patentability shall not be negatived by the manner in which the invention
> was made.

3.   Claims 1 – 9, 11 – 13, and 15 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Jackson (U.S. Publication No. 2004/0078220 A1) in view of Norris et al. (U.S. Patent No. 6,669,631).

In regard to claim 1, Jackson teaches a system comprising:

- A patient portal to the central manager for gathering information (paragraphs [0078] and [0092]).

  The examiner interprets the personalized patient website to be equivalent to a patient portal

  disclosed by Jackson.

- A physician portal to the central manager for providing the gathered information (paragraph

  [0054]) – Jackson discloses a web based medical network of which a physician would have

  access, obtaining the diagnostic information (paragraph [0030]),

- Means for generating a bill based on the delivered educational information and the diagnostic

  information (Figures 9, 10A,12; Paragraphs [0058] and [0059] where Jackson discloses a means

to compensate a physician for remote delivery of health care such as insurance claim submission

or out-of-pocket payments by the patient. The Examiner interprets the compensation system to

be a means for generating a bill.

Jackson fails to explicitly teach a database system with access to medical educational content,

means for extracting patient-specific educational information from the educational content based on

diagnostic information; selecting educational information by the physician from the extracted patient-

specific educational information tailored to the patient diagnosis, wherein the central manager delivers the

physician-selected educational information through the patient portal.

Norris et al. teaches a central manager having a database with access to medical educational content

for patients (column 11, line 29 through column 12, line 4 and column 12, lines 28 – 46), Means for

extracting patient-specific educational information from the educational content based on diagnostic

information (column 5, lines 8 – 28) where Norris describes a system in which a centralized medical

information network delivers medical information to a patient and/or physician based on the medical

condition (diagnosis). The Examiner interprets medical information to be educational information as it

pertains to the specific medical condition of the patient, where the information is derived from public

databases; selecting educational information by the physician from the extracted patient-specific

educational information tailored to the patient diagnosis (column 5, lines 17 – 50 and column 6, lines 14 -

20) where a physician provides medical care to a patient which is included in a patient file. Form this

patient file, the health care provider may communicate with public databases to garner educational or

reference material regarding the patients signs or symptoms (Figure 4 and column 13, lines 11 – 65),

wherein the central manager delivers the physician-selected educational information through the patient

portal (Figure 6; column 5, lines 17 – 50; column 11, line 59 through column 12, line 4; and, column 12,

lines 28 - 46).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention

was made to include a central database system with access to medical educational content, means for

extracting patient-specific educational information from the educational content based on diagnostic

information; and, selecting educational information by the physician from the extracted patient-specific

educational information tailored to the patient diagnosis, wherein the central manager delivers the

physician-selected educational information through the patient portal as taught by Norris et al., within the

system of Jackson, with the motivation of providing a health care provider a tool for conducting remote

medical evaluations and providing information to the patient regarding the result of the evaluation (column

6, lines 41 – 45 and column 15, lines 30 – 35).

In regard to claim 2, Jackson teaches a central manager database system as per claim 1.

Jackson fails to explicitly teach a system of information gathered from implantable medical

devices.

Norris et al. teaches a system wherein the gathered information includes performance data from

an IMD (column 5, lines 29 – 36).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection

of claim 1, and incorporated herein.

In regard to claim 3, Jackson discloses, as per claim 1, wherein the central manager retrieves the

selected educational content based on a diagnostic code (paragraphs [0065] and [0066]). The examiner

interprets the 'common language and code' taught by Jackson to include diagnostic codes in reference to

a patients diagnosis. Therefore, information (both education and historical) can be acquired via the use

of codes.

In regard to claim 4, Jackson teaches a system as per claim 1.

Jackson fails to teach a system where the central database retrieves educational materials

selected by physician instructions.

Norris et al. teaches a system wherein the central manager retrieves the selected education

content based on physician instructions received through the physician portal (column 15, lines 4 – 10

and lines 19 – 29).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 1, and incorporated herein.

In regard to claim 5, Jackson teaches a system comprising:

- Means for providing the patient information to a physician and receiving a diagnosis based on the information (paragraph [0031]. Jackson teaches the use of an application service provider to transmit patient information to a physician as well as providing a patient with a diagnosis.

Jackson fails to explicitly teach a means for gathering patient information, means for extracting patient-specific educational content based on the diagnosis; means for selecting educational information by the physician from the extracted educational content; and Means for delivering the physician-selected educational information to a patient.

Norris et al. teaches a means for gathering information (column 13, lines 47 – 52) via a public domain database, means for extracting patient-specific educational content based on the diagnosis (column 5, lines 8 – 28); means for selecting educational information by the physician from the extracted educational content (column 5, lines 17 – 50 and column 13, lines 11 – 65); and means for delivering the physician-selected educational information to a patient (Figure 6; column 5, lines 17 - 50; column 11, line 59 through column 12, line 4; and, column 12, lines 38 – 46).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 1, and incorporated herein.

In regard to claim 6, Jackson teaches a method for conducting remote medical evaluations, the method comprising:

- Receiving diagnostic information through the physician portal from the physician based on the medical information (paragraph [0081]);

- Identifying educational content relevant to the diagnostic information (paragraph [0081];

- Providing the diagnostic information and educational content through the patient portal (paragraph [0081]).

Jackson fails to teach a method of receiving patient medical information via a patient portal; selecting educational information by the physician from the identified educational content; and a method of providing medical information to a physician through a physician portal.

Norris et al. teaches a method of receiving medical information from a patient through a patient portal into a central server (column 12, line 66 through column 13, line 10); selecting educational information by the physician from the identified educational content (column 5, lines 17 – 50 and column 13, lines 11 – 65); and providing the medical information to a physician through a physician portal that is in communication with the central server (column 5, lines 12 – 16).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of receiving patient medical information via a patient portal or a method of providing medical information to a physician through a physician portal as taught by Norris et al. with the motivation of monitoring a patients medical history and providing diagnostic, therapeutic, and educational materials via a computer system (column 1, lines 8 – 17).

In regard to claim 7 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising:

- Receiving a request through the physician portal to conduct a remote evaluation with the patient from a physician (paragraph [0029]);
- Providing a medical questionnaire to the patient (paragraph [0071]) where the prompts for information initiated by the network is equivalent to a questionnaire; and
- Receiving the completed questionnaire from the patient as part of the medical information (paragraph [0072]).

In regard to claim 8, Jackson teaches a method as per the method of claim 7.
Jackson fails to explicitly teach receiving data from an implanted medical device.

Norris et al. teaches a method to include receiving device data from an IMD implanted within the patient, wherein the device data forms part of the medical information (column 5, lines 29 – 36).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 9 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising generating an electronic prescription as part of the diagnostic information; and transmitting the electronic prescription to a pharmacy (paragraph [0075]).

In regard to claim 11 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising: providing an electronic medical record correlated to the patient (paragraph [0064]); and updating the electronic medical record based on the diagnostic information (paragraph [0080]).

In regard to claim 12 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising providing instructions through the physician portal to follow up personnel based on the diagnostic information (paragraph [0081]).

In regard to claim 13, Jackson discloses, as per the method of claim 6, Jackson teaches a method wherein the educational content is identified based on diagnostic codes (paragraph [0065] and [0066]).

In regard to claim 15, Jackson teaches a method for conducting remote medical evaluations, the method comprising:

- Accessing a physician portal linked with a central manager (paragraph [0055]);
- Receiving patient medical information including IMD data through the physician portal from a patient;
- Evaluating the patient medical information (paragraph [0106]);
- Rendering a diagnosis (paragraph [0080]);

- Sending the diagnosis and the educational <u>information</u> through the physician portal to the patient (paragraph [0054]); and

- Billing for the remote medical evaluation (paragraph [0058]).

Jackson fails to teach a method to receive patient medical information through the physician portal from a patient; <u>retrieving education content based on the diagnosis</u>; and, selecting educational <u>information by a physician from the retrieved content</u> for delivery to the patient.

Norris et al. teaches a method in which patient medical information, including IMD data, is received through the physician portal from a patient (column 5, lines 29 – 36); <u>retrieving education content based on the diagnosis</u> (column 5, lines 8 – 28) and, selecting educational <u>information by a physician from the retrieved content</u> for delivery to the patient (Figure 6; column 5, lines 17 – 50; column 11, line 59 through column 12, line 4; and, column 12, lines 38 – 46).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 16, Jackson discloses, as per the method of claim 15, further comprising notifying additional personnel of follow-up activities for the patient through the physician portal (paragraph [0081]).

In regard to claim 17, Jackson discloses, as per the method of claim 15, further comprising updating an electronic medical record corresponding to the patient (paragraph [0080]).

In regard to claim 18, Jackson discloses, as per the method of claim 15, further comprising generating an electronic prescription (paragraph [0075]).

In regard to claim 19, Jackson teaches a method as per the method of claim 15.

Jackson fails to teach a method where the educational material is selected based on suggested information from the central database.

Norris et al. teaches a method wherein the educational content is selected based on suggested information received from the central manager (column 5, lines 17 – 28).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 20, Jackson teaches, as per claim 19, a method wherein the suggested information is generated based on diagnostic codes (paragraphs [0065] and [0066]).

4.   Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson in view of Norris et al. as applied to claim 6 above, and further in view of www.WebMD.com (November, 2002).

In regard to claim 10, Jackson and Norris et al. teach a method for conducting remote medical evaluations as per claim 6.

Jackson and Norris et al. fail to explicitly teach a method wherein the educational content includes one or more topics selected from the group: disease education, medical device education, general medical information, diet, exercise, or clinical resources.

www.WebMD.com teaches a method where the educational content includes disease education (referred to as Medical Information on the WebMD website), medical device education (can be found in the Clinical Trials section of the WebMD website), general medical information (referred to as Medical Library on the WebMD website), diet (referred to as Food and Nutrition on the WebMD website), exercise (referred to as Sports and Fitness on the WebMD website), or clinical resources (referred to as Clinical Trials on the WebMD website).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method where the educational material is includes disease education, medical device education, general medical information, diet, exercise, or clinical resources as taught by www.WebMD.com with the motivation of providing a toll to manage health concerns (paragraph 21) in which you can find education material in regard to diseases, exercise, nutrition, physicians, and more.

5.   Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson in view of Norris et al. as applied to claim 6 above, and further in view of Lin et al. (E-healthcare: A vehicle of change. American Business Review. West Haven: Jun 2002. Vol. 20, Iss. 2; page 27, 6 pages).

In regard to claim 14, Jackson and Norris et al. teach a method for conducting remote medical evaluations as per claim 6.

Jackson and Norris et al. fail to teach a method of customer loyalty.

Lin et al. teaches a method of providing customer loyalty information through the physician portal (paragraph [0023]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of providing customer loyalty information through the physician portal as taught by Lin et al. with the motivation of providing a secure means of transmitting patient data to appropriate parties - i.e. pharmacist, specialist (paragraph 22).

Response to Arguments

6.   Applicant's arguments filed May 12, 2008 have been fully considered but they are not persuasive. Applicants arguments will be addressed herein below in the order they appear in the response filed May 12, 2008.

In regard to claims 1 and 6, the applicant argues that none of the cited references, alone or in combination with other references teaches or suggests extracting patient-specific educational information based on a caregiver's diagnosis. The Examiner respectfully disagrees. Jackson discloses a system in which a patient's medical history is used for generating a diagnosis, both remotely (paragraph [0029]) and automated (paragraph [0030]).

Norris teaches a system is which a patient with an implantable medical device can be remotely monitored (column 5, line 8 – 17), and a patient's medical history (column 6, lines 21 – 40), as well as

new patient information (column 14, lines 16 -24 and column 15, lines 36- 39), is used to generate

educational or reference material from independent medical databases based on a patient-specific

condition (column 5, lines 18 - 50). The educational or reference materials are forwarded to the patient

and/or healthcare provider based upon the patient's signs and symptoms (column 5, lines 17 – 50 and

column 6, lines 14 - 20).

One of ordinary skill in the art could reasonably combine the teachings of Jackson and Norris by

diagnosing a patient, remotely or automated, and providing the patient with educational material pertinent

to the patients diagnosis. Thus, the Applicant's argument is rendered non-persuasive.

The Examiner respectfully disagrees with the Applicant's assertion that Jackson discloses the

treatment and/or diagnosis of a patient's medical symptoms and signs are performed by an automated

system. Jackson discloses "receiving a health care request … transmitting said health care request to at

least one health care provider … generating diagnostic, treatment, and/or management instructions"

(paragraph [0029]). The Examiner interprets this to be a system in which an electronic request for a

medical evaluation is forwarded to a health care provider using a networked system, the health care

provider will make a diagnosis based on the information with the assistance of a computer. The

Physician is making the diagnosis aided by databases contained in the computer. The Jackson reference

discloses physician and patient portals (Figure 7), where an Application Service Provider is used to

generate a request for medical service, which is output to a health care provider, who then generates

diagnostic, treatment or management instructions back to the Application Service Provider, then to the

user (patient) – paragraphs [0031] and [0055]. Thus, based upon the disclosure of Jackson, the

Applicant's argument is rendered non-persuasive.

The Examiner respectfully disagrees with the Applicant's argument regarding the inflexibility in

diagnosing new or deteriorating conditions due to reliance on past diagnosis and or treatment options.

Jackson discloses an embodiment of the invention in Figures 3a and 3b. In addition, Jackson teaches

the remote patient experience signs or symptoms indicative of a need for medical attention (i.e. fever,

chest pain) all of which would be a sign or symptom of a possible new medical condition. Thus, the

Applicant's argument is rendered non-persuasive.

Conclusion

7.   Any inquiry concerning this communication or earlier communications from the examiner should

be directed to KRISTINE K. RAPILLO whose telephone number is (571)270-3325. The examiner can

normally be reached on Monday to Thursday 6:30 am to 4 pm Eastern Time.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke

Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this

application or proceeding is assigned is 571-273-8300.

        Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative

or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-

1000.

KKR

/C Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626